

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

JOHN M. DONOHUE,

§

Plaintiff,

§

v.

No. SA-14-CV-767-XR

SAN ANTONIO POLICE
DEPARTMENT, ET AL.

§

Defendants.

ORDER

On this day, the Court considered Plaintiff's motion to remand. Doc. No. 3. After careful consideration, the motion is DENIED.

Plaintiff filed a pro se petition in the 57th Judicial District Court of Bexar County, Texas on August 7, 2014. In that petition Plaintiff alleged that he was wrongfully imprisoned and assaulted by police officers in August 2013. In his petition Plaintiff alleges that Defendants committed various torts under Texas state law, violated various state statutes, and in paragraphs XIII and XV, Plaintiff alleges that Defendants violated the Fourth, Fifth and Eighth Amendments to the United States Constitution.

Because Plaintiff asserted a federal question, San Antonio Police Officer Perla Dominguez removed the case to this court pursuant to 28 U.S.C. § 1331. Plaintiff objects to the removal and requests that the case be remanded to state court arguing that removal was merely done for purposes of delay.

A defendant may remove to federal court only state-court actions that originally could have been filed in federal court. *Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987). Absent diversity, removal is only appropriate for claims within the district court's federal question

jurisdiction. 28 U.S.C. § 1331. Federal question jurisdiction extends to “all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Generally, the presence or absence of federal-question jurisdiction is determined according to the “well-pleaded complaint rule,” which finds federal jurisdiction only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint. *Caterpillar Inc.*, 107 S.Ct. at 2429.

Plaintiff pled that Defendants violated the Fourth, Fifth and Eighth Amendments to the United States Constitution, and accordingly removal to this court was proper and this Court has federal question jurisdiction. Accordingly, Plaintiff’s motion to remand is denied.

Since no discovery has taken place and not all defendants have been served, if Plaintiff desires to amend his complaint and delete any and all federal claims, Plaintiff should file an amended complaint in this court which deletes all references to any federal statute or the U.S. Constitution. If Plaintiff does so, he may then file a motion to remand his case to state court if he so desires.

SIGNED this 30th day of September, 2014.



XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE